

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JAMES TROY WALKER,	)	
	)	
Plaintiff(s),	)	No. C07-3100 BZ
	)	
v.	)	
	)	
PACIFIC MARITIME ASSOC., et	)	<b>ORDER DENYING PLAINTIFF'S</b>
al.,	)	<b>SECOND REQUEST FOR</b>
	)	<b>APPOINTMENT OF COUNSEL</b>
Defendant(s).	)	
_____	)	

Plaintiff has requested appointment of counsel. In a civil action, a plaintiff has no right to appointment of counsel, but a court may appoint counsel at its discretion. U.S. v. \$292,888.04, 54 F.3d 564, 569 (9th Cir. 1995). A court has discretion to "request an attorney to represent any person unable to afford counsel." 28 U.S.C. 1915(e)(1) (formerly 1915(d)); Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). However, counsel may be appointed only in "exceptional circumstances." Id.; Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). In determining whether to appoint counsel, a court considers various factors such as the plaintiff's financial need, whether plaintiff has made

1 diligent efforts to secure counsel, the likelihood of success  
2 on the merits, and plaintiff's apparent ability to articulate  
3 their claims in light of the complexity of the issues  
4 involved. See, e.g., 28 U.S.C. 1915(e)(1); Agyeman v. Corr.s  
5 Corp. of Amer., 390 F.3d 1101, 1103 (9th Cir. 2004); Wilborn  
6 v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). "A  
7 finding of exceptional circumstances requires an evaluation of  
8 both the likelihood of success on the merits and the ability  
9 of the petitioner to articulate his claims pro se in light of  
10 the complexity of the legal issues involved. Neither of these  
11 factors is dispositive and both must be viewed together before  
12 reaching a decision on request of counsel." Wilborn, 789 F.2d  
13 at 1331.

14 In support of his request for appointment of counsel,  
15 plaintiff has submitted a letter from an attorney rejecting  
16 his case as well as a letter from his physician, Dr. Mizock.  
17 According to Dr. Mizock, plaintiff is permanently disabled and  
18 has been unable to work since May 2002 because he suffers from  
19 "post-concussion symptoms, including severe chronic head-  
20 aches, ataxia, memory problems, etc."

21 Plaintiff has sued defendant for injuries he allegedly  
22 sustained while working as a longshoreman unloading a ship.  
23 Defendant's motion to dismiss for failure to sue within the  
24 Jones Act's three statute of limitations, was denied based on  
25 plaintiff's contention that the statute of limitations was  
26 tolled under the doctrine of equitable estoppel. The doctrine  
27 of equitable tolling may apply where extraordinary  
28 circumstances outside the plaintiff's control make it

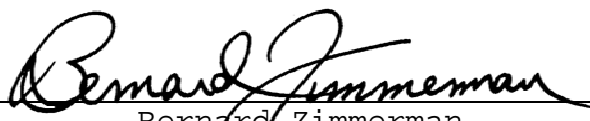
1 impossible for the plaintiff to timely assert his claim.

2 Stoll v. Runyon, 165 F.3d 1238, 1242 (9th Cir. 1999).

3 Plaintiff has not yet met his burden of demonstrating  
4 that he is likely to succeed on the merits, that he is unable  
5 to present his own case, or that he qualifies financially.

6 For these reasons, **IT IS HEREBY ORDERED** that plaintiff's  
7 request for the assistance of court-appointed counsel is  
8 **DENIED** without prejudice to being renewed in the future.

9 Dated: July 15, 2008

10   
11 Bernard Zimmerman  
United States Magistrate Judge

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13 G:\BZALL\BZCASES\Walker v. Pac. Maritime\ODER DENYING MOT TO APPOINT  
COUNSEL.wpd  
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